

1 JUDGE MILLER: All right. Paragraph 19 sets up the,  
2 the upcoming September 30, 1993, Evidentiary Admissions  
3 Session, and there each of you, TMC first, followed by Pacific  
4 Bell, will formally identify and offer into evidence the  
5 exhibits you exchanged today and I'll rule on any objections  
6 that you have to your opponent's exhibits. When that is  
7 completed, we'll, we'll set up a cross-examination notifica-  
8 tion. In other words, you, you -- once you know what evidence  
9 is in and what evidence is out, you'll be in a position to  
10 say: here's who I want to cross-examine. There may be some  
11 people you don't. And if, if, if you don't want to cross-  
12 examine them, that's going to save us all some hearing time,  
13 if you are able to tell us. I'm not encouraging that particu-  
14 lar method. I just say that that's, that's life. But if you  
15 say you want to cross-examine them, then, then I'll hear -- if  
16 there's, if there's any argument about whether they should be  
17 brought or not, I'll hear it. But that will be -- all take  
18 place on September 30, 1993, or October 1st if we run over.  
19 All right?

20 MR. HELEIN: Your Honor, is -- that will all be done  
21 orally, I --

22 JUDGE MILLER: Yeah.

23 MR. HELEIN: -- take it?

24 JUDGE MILLER: Yeah. In the old days we didn't do  
25 it that way. In the old days we used to have a written

1 procedure that you -- that followed about a week behind. But  
2 the Commission decided that they wanted to streamline the  
3 adjudicatory processes and they proceeded to do so, Mr.  
4 Helein, with, with, with people who hadn't been in the hearing  
5 room in 15 to 20 years and, as a consequence, we now do things  
6 a little differently here. But -- in fact, the Commission  
7 has, has indicated that they don't like -- because they're  
8 never really in the hearing room, you see. But they, they,  
9 they don't like cross-examination. That's the essence of it,  
10 isn't it, Mr. Waysdorf?

11 MR. WAYSDORF: Absolutely. And I was surprised to  
12 hear the -- I share your sentiments, Your Honor.

13 JUDGE MILLER: But I, I have found that looking at  
14 -- listening to witnesses and looking at them, even though  
15 there is no character qualifications involved, that it, it's  
16 just -- I've found, I've found it beneficial myself. We'll  
17 have -- after the, after the, the Admissions Session or imme-  
18 diately thereafter, we'll have a cross-examination notifica-  
19 tion and there you'll -- each of you will indicate which of  
20 your opponents witnesses, if any, you need to cross-examine.

21 Are the procedures clear, Mr. Helein?

22 MR. HELEIN: Yes, Your Honor. I would ask for the  
23 clarification in the instance in which much of our case is  
24 dependent upon the adverse witnesses. Is there anything  
25 different that, that would --

1 JUDGE MILLER: Well, that, that's going to be just  
2 like a regular witness and -- I mean, you can use your state-  
3 ments as a basis. But then you will put these people on the  
4 stand, and if you want to elicit additional information from  
5 them, yes. The, the -- there we're going to go like, like  
6 they do it in court --

7 MR. HELEIN: All right.

8 JUDGE MILLER: -- when, when we get to, to adverse  
9 witnesses. If you believe that a witness is, is an adverse  
10 witness, I think you ought to get a ruling from the bench,  
11 even though they may be -- you might find that in your mind  
12 it's self-evident, they're employees of, of the Defendant. I,  
13 I think for your, for your protection you ought to ask that  
14 they be so judged. All it means is you can ask them some  
15 leading questions.

16 MR. HELEIN: Yes, Your Honor. Now, do you wish to  
17 do that at the time that they're --

18 JUDGE MILLER: At the time that witness takes the  
19 stand.

20 MR. HELEIN: Thank you, Your Honor.

21 JUDGE MILLER: All right. Are the procedures -- the  
22 -- for the Evidentiary Admissions Session and witness notifi-  
23 cation -- do you have any problems, Ms. Woolf?

24 MS. WOOLF: No.

25 JUDGE MILLER: All right. Okay. Paragraph 20

1 through 22 sets up the hearing procedures. Paragraph 20  
2 through 21 deal with the order of things. Any questions about  
3 those paragraph, Mr. Helein?

4 MR. HELEIN: No, Your Honor.

5 JUDGE MILLER: Ms. Woolf?

6 MS. WOOLF: No.

7 JUDGE MILLER: Paragraph 22 explains the rebuttal  
8 procedures. Any, any questions about that, Mr. Helein?

9 MR. HELEIN: If, if you could -- I, I certainly  
10 understand the language. It's very clear.

11 JUDGE MILLER: You want to know what, what, what a  
12 clear and convincing case for rebuttal is?

13 MR. HELEIN: I would like to have --

14 JUDGE MILLER: And I'll tell you --

15 MR. HELEIN: -- His Honor's definition, yes, Your  
16 Honor.

17 JUDGE MILLER: Yes. When you -- once you say to me  
18 I, I, I, I want to make a request for rebuttal, I'm going to  
19 say in what area are you -- do you want rebuttal? And you're  
20 going to be able to follow it out.

21 MR. HELEIN: Okay.

22 JUDGE MILLER: Who, who, who is it that you are  
23 rebutting? In other words, I, I, I've got to avoid the pit-  
24 falls of more red-- more direct.

25 MR. HELEIN: Yes, sir.

1 JUDGE MILLER: And, and these are the questions I  
2 ask. What are you rebutting? Who are you rebutting? How do  
3 you intend to, to, to present that rebuttal evidence and when  
4 can you present it?

5 MR. HELEIN: Thank you, Your Honor.

6 JUDGE MILLER: Clear?

7 MS. WOOLF: Fine, thank you.

8 JUDGE MILLER: Paragraph 23 and 24 deal with exten-  
9 sions of time and hearing dates. It looks like we're going to  
10 go, we're going to go to hearing. I don't see that your  
11 request for sanctions interferes with the trial. It, it, it  
12 is a form of relief that if I grant it will be helpful in you  
13 preparing a set of Proposed Findings of Fact and Conclusions  
14 of Law.

15 MR. HELEIN: Yes, Your Honor.

16 JUDGE MILLER: But it, it doesn't -- it need not  
17 interfere with our forward progress to developing the record.  
18 This -- is my position clear to here?

19 MR. HELEIN: It is clear and I would agree with it,  
20 Your Honor.

21 JUDGE MILLER: As I set out, November 1st through,  
22 through the 19th are firm dates, as you, as you probably  
23 realize. We won't be meeting on Thursday, November 11th,  
24 Veterans Day. But on, on the days that we do meet, we'll  
25 begin at 8:30 a.m. and we'll end at 5:30 p.m. with an hour for

1 lunch. Over the years I've discovered that trials take less  
2 time when they're conducted on a full-day basis with no inter-  
3 ruptions other than short scheduled breaks at mid-morning and  
4 mid-afternoon and time for lunch. With that said, let me go  
5 over a couple of ground rules that I've found over the years  
6 kind of helps, helps things run smoother.

7           Rule one, address the bench and not each other.  
8 Personal colloquys between counsel cause delays, promote  
9 confusion, and create a generally complex and unhealthy atmos-  
10 phere. Now, having said that, I'll be \$20 it's violated. So  
11 -- but, in any event, I -- that's -- this is the goal that I'm  
12 striving for, addressing the bench and not each other.

13           Rule two, treat your adverse witnesses with fairness  
14 and respect. Be polite. Don't confuse robust litigation and  
15 rudeness. There's really no need to be abusive and offensive.  
16 If -- it's difficult, even in the less complex cases, let  
17 alone 208. That the best cross-examiners I've ever seen just  
18 elicited facts. It's been a long time since I've seen one.

19           Rule three, don't argue with the witness. Counsel  
20 can't testify, the witness can, so you're bound to lose the  
21 argument. And a corollary to that which we'll cover when we  
22 get down the road is don't write findings and conclusions  
23 based on what you say, just write them based on the witness  
24 says.

25           We've outlined the way that we're going to proceed,

1 | so have your witnesses ready to go. Now, we're not going to  
2 | hold up the hearing because a witness or witnesses haven't  
3 | arrived yet. And don't anticipate, because there are several  
4 | witnesses ahead of the ones that you have scheduled, that you  
5 | have ample time to get them here. That type of time cushion  
6 | has a way of evaporating.

7 |           Counsel -- there are quite a few counsel, including  
8 | Aaron Shanis (phonetic sp.), I could name a lot of them, don't  
9 | care for what I just said, but I -- so I always would like to  
10 | tell them why I don't accommodate witnesses. When I accommo-  
11 | date Witness X, I'm disaccomodating Mr. Waysdorf, Mr. Helein,  
12 | Mr. Manley, Ms. Woolf, Mr. Wyatt, and even you, Ms. Nogales,  
13 | and, and the reporter and myself. So, I'd, I'd rather disac-  
14 | commodate the witness and accommodate all of us. And I found  
15 | out it works better. So, I want my witnesses here and I, and  
16 | I don't expect any break -- I mean, except the brief one to  
17 | walk out to the witness room and get them.

18 |           We're going to be in -- rule, rule six, we'll be in  
19 | hearing from 8:30 to 5:30, as I said, with an hour for lunch,  
20 | so tell your loved ones to leave you the light in the window.

21 |           Those rules should help us. And here's the trial  
22 | philosophy that we're going to proceed under. Trial time is a  
23 | limited resource, and both the bench and the bar are responsi-  
24 | ble for using that time wisely. So, there will be few, if  
25 | any, off-the-record conferences. I don't believe in them.

1 There will be no lobby conferences. Trial time is precious,  
2 so we will preserve our hearing time for that purpose. I  
3 don't labor under any illusions, but un-- a well-prepared  
4 trial with competent counsel practically runs itself. There  
5 are few distractions. There are few interruptions. As a  
6 trial judge, I want each of you to have your day in court  
7 without either being hurried or detained. So, be fully aware  
8 the trial -- the, the bench looks at this as trial time.  
9 Trial time is precious.

10 Now, having said that, is there anything further we  
11 need to take up today, Mr. Helein?

12 MR. HELEIN: I don't believe so, Your Honor. Thank  
13 you.

14 JUDGE MILLER: Ms. Woolf?

15 MS. WOOLF: No.

16 JUDGE MILLER: Mr. Wyatt?

17 MR. WYATT: Well, Your Honor. I was just hoping you  
18 wouldn't mention the Telstar case, but you did.

19 JUDGE MILLER: I did. Well, you know, nobody in the  
20 room knew I was needling you.

21 In that case, since there is nothing further we have  
22 to take up today, we stand in adjournment until the  
23 Evidentiary Admissions Session on September 30, 1993, at 8:30  
24 a.m.

25 (Whereupon, at 10:00 a.m. the Prehearing Conference  
was adjourned.)



**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN THE MATTER OF TMC v. PACIFIC BELL

**Name**

CC DOCKET NO. 93-161

**Docket No.**

WASHINGTON, D.C.

**Place**

SEPTEMBER 21, 1993

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 57, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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